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# Conspiracy Issue Aired At Libel Trial of CBS

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NEW YORK, Jan. 31—A bitter disagreement over enemy troop strength in Vietnam in 1967—a dispute at the core of retired general William C. Westmoreland's \$120 million libel suit against CBS—was much like a “disagreement over which football team is going to win the Super Bowl,” Westmoreland's lawyer said today.

Dan M. Burt, challenging a line of

CBS witnesses who accused Westmoreland's command of suppressing higher enemy numbers, said their testimony has “all the earmarks of a very bitter dispute, but not evidence of any conspiracy to deceive or attempted deception.”

After Burt's address to the jury, CBS lawyer David Boies angrily took issue with Burt's characterization of the testimony supporting the 1982 CBS documentary at issue in the case.

“Let there be no mistake about

it,” Boies said. “This is not an honest disagreement. This has nothing to do with the Super Bowl. This is something that was properly described as a conspiracy.”

Referring to the witnesses for CBS, Boies said: “You heard the words. They were words of ‘dishonesty,’ ‘suppression,’ ‘guilt.’”

Westmoreland claims that he was libeled by the 1982 documentary, “The Uncounted Enemy: A Vietnam Deception,” which accused him of leading a “conspiracy at the highest levels of American military intelligence” to undercount enemy strength in Vietnam in 1967. The broadcast concentrated on why Americans were told that “the enemy was running out of men” shortly before the Tet offensive, a massive attack on almost all bases and major cities that began in January 1968.

Under an innovative procedure

allowed by U.S. District Court Judge Pierre N. Leval, each side has been given two hours to break into the case occasionally and summarize it.

Today's “mini-summations,” as they have been dubbed, were revealing because they raised issues that could be crucial when the lawyers give their final speeches to the jury in about three weeks.

Burt, for example, argued that so many people in Westmoreland's command and in the Central Intelligence Agency had shared the troop-strength information that a conspiracy was impossible.

“Suppose you are a bank teller and you want to embezzle, and so you make out a couple of checks—one to D. Duck and one to M. Mouse—and then you cash the checks yourself. You are not going to take those checks and go rushing up to the bank manager and say,

‘Hey, take a look at this.’ That just doesn't make sense,” he said.

He also argued that, unlike some other libel cases, “this is not a hot news item . . . and words were said that, while they might have been careless, they were not deliberate.

“This broadcast was prepared over the course of some 18 months . . . [CBS] had time to discriminate between a bitter disagreement and a conspiracy—by a man who had spent his life in uniform—to deceive his superiors.”

In his mini-summation, CBS lawyer Boies talked about an issue that has not received much attention thus far in the 16-week trial: whether the broadcast pinned the alleged conspiracy on Westmoreland personally.

Pointing to an enlargement of an advertisement for the program, Boies told the jury: “It nowhere mentions Westmoreland.”

Reading from the ad, Boies said it suggested that there was a “deliberate plot to fool the American public, the Congress and perhaps even the White House.” He emphasized the word “perhaps.”

Boies said jurors must decide a “threshold matter”—whether the show accused Westmoreland “personally, as opposed to his command.” He said they also must determine whether the documentary was about a conspiracy to fool the American public and Congress or to fool Westmoreland's superiors.

Burt, who has said the broadcast defamed Westmoreland by accusing him of a breach of duty by hiding data from his superiors, has attempted to make clear that Westmoreland has not conceded that he tried to fool the public and Congress, even though he does not consider that question central to his case.